IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.6448 OF 2005

Uttam Ambadas Rai (Kalal) .... Petitioner
Vs.
Anil @ Navinchandra Mahadev
Rai & Ors. .... Respondents

Shri P.J. Thorat for the Petitioner.

Shri P.S. Dani for the Respondent No.1.

Ms Preetam Tendolkar i/b Shri M.S. karnik
for the Respondent No.2.

Sarvasri Umesh Mankapure i/b R.V. More
for the Respondent No.3.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: APRIL 10, 2006

ORAL ORDER:

1. Heard. The petitioner challenges the order dated 18-7-2005 whereby the trial Court has allowed the respondent No.1 to be represented by another Advocate in the suit.

2. Relying upon the decisions in the matters of **Venkatrao A. Pai and Sons Ltd., v. Narayanlal Bansilal and others**, reported in AIR 1961 Bombay 94 and **BBN (UK) Ltd. and others v. Janardan Mohandas Rajan Pillai and others**, reported in 1993 (3) Bom.C.R. 228, the learned Advocate appearing for the petitioner submitted that the trial Court erred in allowing the application filed by

the respondent No.1 to permit him to be represented by an independent Advocate when in fact the petitioner along with the respondent No.1 and another plaintiff are being represented by one Advocate and their interest in the matter is common. Attention is drawn to Order 3, Rule 1 of the C.P.C., as also to Order 1, Rules 11 and 12.

3. By the impugned order, the trial Court has allowed the application filed by the respondent No.1 to permit him to be represented by another Advocate on the ground that he has lost confidence in the Advocate already on record, representing the plaintiffs.

4. Considering the provisions of Order 3, Rules 1 and 4 of the C.P.C., the statutory right is assured to the parties to the proceedings before the civil Court to be represented by the Advocates of their choice. When a party to the proceedings looses his/her confidence in his/her Advocate, he/she cannot be denied an opportunity of being represented by another Advocate of his/her choice.

5. The Order 1, Rules 11 and 12 relates to the parties to the proceedings and not to the Advocate representing the parties. The reference to those provisions, in the facts and circumstances of the case, is therefore

totally uncalled for.

6. Undoubtedly, when there are more than one plaintiff in a proceedings, question of allowing two or more Advocates to represent such plaintiffs does not arise. Certainly in such cases only one Advocate would be entitled to represent all the plaintiffs.

7. In case of conflict of interest, certainly the plaintiff/plaintiffs developing such conflict even after the filing of the suit, can move for his/their transposition as defendant/s in the suit. Ample power in that regard is available to the Court under Order 1, Rule 10 of the C.P.C..

8. Being so, whenever an application is filed by one of the plaintiffs complaining of loss of confidence in the Advocate on record and on that count for permission to be represented by another Advocate, though he cannot be denied such opportunity, the Court can consider whether such plaintiff or any other plaintiff should be transposed as the defendant. Undisputedly, in the case in hand, no such issue was sought to be raised by the petitioner or any other party. Only point which was considered was whether the respondent No.1 would be entitled to change his Advocate, having lost confidence in the Advocate who was already representing him.

9. The trial Court having found that the respondent No.1 had lost confidence in the Advocate who was already representing him, he has been permitted to be represented by another Advocate. Certainly, on that count if there is conflict of interest developed in the matter, the parties are at liberty to take proper steps and the Court may thereupon pass order in accordance with the provisions of law. That itself, however, would not be a justification for interference in the impugned order which has been passed bearing in mind the provisions of Order 3, Rules 1 and 4 of the C.P.C..

10. In the circumstances, therefore, the decisions of the learned single Judge in **Venkatrao Pai's** case (supra) as well as in **Janardan Mohandas Rajan Pillai's** case (supra) are of no help to the petitioner to seek interference in the impugned order. There being no jurisdictional error committed while allowing the respondent No.1 to change his Advocate by the impugned order, the petition fails and is hereby dismissed.

(R.M.S. Khandeparkar, J.)

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